

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Plaintiff,

v.

WEST QUEST, INC., d/b/a THE
INCREDIBLE BALLOON MACHINE
COMPANY

Respondent.

ASSURANCE OF VOLUNTARY COMPLIANCE

THIS ASSURANCE OF VOLUNTARY COMPLIANCE ("Assurance") is given by West Quest, Inc., d/b/a The Incredible Balloon Machine Company ("Respondent"), to Paul G. Summers, Attorney General and Reporter for the State of Tennessee ("Attorney General").

WITNESSETH:

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division of Consumer Affairs of the Department of Commerce and Insurance (the "Division") and the Attorney General conducted an investigation at the Business Opportunity and Franchise Show held at the Nashville Convention Center on October 26-27, 1996 in Nashville, Tennessee. The Division and the Attorney General allege that, at the Business Opportunity and Franchise Show, Respondent made representations regarding the earning potential of Respondent's business opportunity to consumers without providing appropriate substantiation. As a result of the investigation, the Division and the Attorney General concluded that Respondent had violated the Tennessee Consumer Protection Act of

1977, Tenn. Code Ann. §§ 47-18-101, et seq. (the "Act").

B. Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to Tenn. Code Ann. § 47-18-107, Respondent gives, and the Attorney General accepts, the following assurances:

1. BUSINESS PRACTICES

1.1 Respondent agrees not to directly or indirectly engage in any unfair or deceptive acts or practices in the conduct of its business. Respondent further agrees to fully abide by all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, et seq., including but not limited to §§ 47-18-104(a), (b)(5) and (b)(27), which prohibit unfair and deceptive acts and practices.

1.2 Respondent agrees to fully comply with all provisions of the FTC Franchise Rule, 16 C.F.R. § 436.1, et seq.

1.3 Respondent agrees not to, directly or indirectly, provide information, estimates, approximations and/or representations regarding the potential income and/or earnings, which may result from the purchase, ownership and/or operation of Respondent's business opportunity or franchise, without complete and accurate substantiation for each such claim at the time such claims are made. Complete and accurate information, in the context of this paragraph, refers to at a minimum, the information required by the FTC Franchise Rule.

1.4 Respondent agrees to review any employee's record if Respondent receives two or more complaints or other reliable information indicating that an employee has made any misrepresentation to a consumer, or otherwise violated any provision of this Assurance. Respondent agrees to promptly discipline employees for such employee misconduct and review all purchases of franchise or business opportunities involving that employee to ensure that no violations to this Assurance occurred. Further Respondent agrees to report any such findings to the Attorney General within ten days of discovery if the conduct occurred within the State of Tennessee or involved a Tennessee consumer.

1.5 Respondent agrees to conduct and provide a written training manual regarding the Act and where applicable the Franchise Rule to all of Respondent's employees and/or representatives who are responsible for and/or involved with the selling and/or promoting of franchise and/or business opportunities in Tennessee. The training manual shall include information designed to educate all such employees about the requirements of the Tennessee Consumer Protection Act and where applicable the Franchise Rule, including, but not limited to, the obligation to provide full and complete disclosure in accordance with the Tennessee Consumer Protection Act to interested consumers. These training sessions shall also include information regarding Respondent's policy prohibiting unsubstantiated earnings claims during conversations with interested consumers. Within sixty days of execution of this

Assurance, Respondent shall provide to the Attorney General a copy of the training manual provided to its employees and an affidavit stating and certifying that the manual has been provided to all employees responsible for and/or involved in the selling or promoting of franchises and/or business opportunities to consumers in Tennessee along with a copy of Respondent's procedure for ensuring that all new employees receive the training manual in the future prior to engaging in sales activities on behalf of the Respondent.

2. JURISDICTION

2.1 Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and Agreed Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and attorneys' fees and any costs associated with any petitions to enforce any provision of this Assurance and Agreed Order against Respondent if the petitioner prevails.

3. RESTITUTION

3.1 Respondent shall provide to the State, contemporaneously with the entry of this Assurance, an alphabetical list of the names, amount paid to Respondent, address and telephone number of each consumer who purchased a franchise or business opportunity or other goods or services from the Respondent after attending the Franchise and Business Opportunity Show at the Nashville Convention Center on October 26-27, 1996, or a subsequent meeting arranged at that show. This list shall be attached as Exhibit A to this Assurance. Respondent understands that the State expressly relies upon Respondent's representation that the list is complete and accurate, and if this representation is false, inaccurate, or misleading, the State may move to vacate or set aside this Assurance and Agreed Order and may request that Respondent be held in contempt.

3.2 For each and every consumer listed in Exhibit A, within fourteen (14) days of entry of this Assurance, the Respondent, shall mail a letter from the Attorney General and Reporter of the State of Tennessee (attached hereto as Exhibit B) printed on letterhead chosen at the sole discretion of the Attorney General and Reporter, along with the FTC Consumer's Guide to Buying a Franchise and Respondent's FTC disclosure statement, if applicable.

(A) No other materials, including promotional materials, may be included in this packet to consumers. Respondent shall also offer, within fourteen (14) days of the entry of this Assurance, the opportunity to obtain a full monetary refund of the entire purchase price of Respondent's business opportunity or franchise, including any goods or services purchased if the consumer is dissatisfied for any reason. (For the purpose of this Assurance, the purchase price shall include all deposits, fees, taxes and any other charges regardless of the

identifying term for such charge which was incurred by the consumer.)

(B) The materials required by this section must be mailed via certified first class postage paid mail through the United States Postal Service. The mailing must be sent in envelopes chosen at the sole discretion of the Attorney General and Reporter. All envelopes must be clearly marked "POSTMASTER: ADDRESS CORRECTION REQUESTED" and "IMPORTANT INFORMATION REGARDING CLAIMING A MONEY REFUND". In the event any envelope is returned with a corrected or forwarding address, Respondent shall again offer the full package to the consumer via certified mail through the United States Postal Service at the correct address. For said consumers, the ninety (90) day period set forth in paragraph 4.4 shall not commence until the date of mailing of the second notice and packet to the corrected address. The Attorney General shall receive written notification of the name, corrected address and date of mailing the second notification to any consumer within five (5) days of mailing the second notice.

(C) All consumers who make a written request postmarked no later than one hundred and eighty (180) days after the mailing of Exhibit B will receive a full monetary refund for the purchase price of the franchise or business opportunity, including any goods or services purchased. To comply with this section, the consumer refund request must be postmarked within one hundred eighty (180) days of the mailing of Exhibit B to eligible consumers. All refunds will be honored regardless of whether they are received by the Respondent or any agency of the State. No other materials, including promotional materials may be included with the refund checks.

(D) Consumer refunds shall be made by check drawn on an account with a sufficient cash balance to fund all refunds and shall not consist of credits, discounts or other partial reimbursement of the purchase price. All consumer refunds shall be mailed by first class postage paid United States Mail within two (2) weeks of the receipt of the refund request. Envelopes shall be marked "POSTMASTER: ADDRESS CORRECTION REQUESTED" and refunds shall be re-mailed with an address correction where applicable.

(E) In the event Respondent is unable to locate consumers entitled to a refund, those funds due such consumers shall be treated as unclaimed property in the possession of the State of Tennessee pursuant to the Uniform Disposition of Unclaimed Property Act, Tenn. Code Ann. § 66-29-101, et seq. These funds may be delivered to the Treasurer prior to the statutory due date. The Respondent shall provide a report to the Attorney General and Reporter within six (6) months of the entry of the Order which details the amounts delivered to the Treasurer for treatment as unclaimed property under the State statute. The Respondent shall continue to provide this information every six (6) months until all funds have been claimed and/or returned to the Respondent. The Respondent shall provide all information necessary to the State treasurer's office to appropriately handle such funds as unclaimed property as set forth by statute and regulation.

(F) Respondent is responsible for all costs associated with the refund process set forth in subsection 3, including, but not limited to, all costs associated with mailing, all letterhead, FTC Consumer Guides, FTC disclosure statements, envelopes, copying charges, and postage.

(G) Within six (6) months of entry of the Assurance and Order, Respondent shall file with the Attorney General the following information and shall supplement the information as is necessary:

1. A report verifying and certifying that eligible consumers who have requested a refund have, in fact, received a full refund. Additionally, the Respondent shall verify and certify compliance with each provision of this Assurance of Voluntary Compliance and Agreed Order with respect to refunds.
2. An alphabetical list of the name and address of each consumer who requested a refund and the total amount of all refunds provided.
3. An acknowledgment that each officer, director and employee of Respondent received a copy of this Assurance and has certified to having read it.

(H) Within ten (10) days of receipt of a request from the Attorney General's Office for evidence that a specific consumer or consumers have received Exhibit A, Exhibit B and/or a refund, Respondent shall provide any documents, books and/or records necessary to establish to the satisfaction of the Attorney General and Reporter that the refund process complied with this Assurance and Agreed Order. These documents may include, but shall not be limited to, copies of the front and back of canceled checks and/or mailing records along with certified mail receipts indicating that the identified consumer or consumers received the Exhibit and/or a refund. The documents, books or records shall be physically turned over and provided to the Attorney General's office no later than ten (10) days from receipt of such request. This paragraph shall in no way limit the Attorney General's or the Division of Consumer Affairs' right to obtain documents, records and/or testimony through any other state or federal law, regulation or rule.

(I) Should the consumer request a refund, the consumer shall return to Respondent, at Respondent's cost, the machine(s) and kit supplies that the consumer purchased in reasonably good condition, at which time a full refund shall be delivered. Should the consumer not have the machine(s), or should the machine(s) not be in reasonably good condition, then the consumer shall receive a refund of the greater of 50% of the purchase price or the fair market value of the machine(s) and kit supplies. The Director of the Tennessee Division of Consumer affairs shall be the final arbiter as to any issue relating to

the condition of the equipment and the amount of refund due the consumer. Should the Respondent not be able to locate the consumer then the payment required in Section 3.2 (E) shall be 50 % of the purchase price of the machine(s) and kit supplies.

4. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE

4.1 Respondent shall pay the sum of One Thousand and 00/100 Dollars (\$1,000.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter which may be used for consumer protection purposes at the sole discretion of the Attorney General. This payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the State of Tennessee on the day of execution of this Assurance.

5. MONITORING AND COMPLIANCE

5.1 Upon request, Respondent agrees to provide books, records and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State reasonably necessary to establish compliance with this Assurance. Respondent shall make any requested information available within one month of the request, at the Office of the Attorney General or at any other location within the State of Tennessee that is agreeable to Respondent and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

6. PRIVATE RIGHT OF ACTION

6.1 Pursuant to Tenn. Code Ann. § 47-18-109, nothing in this Assurance shall be construed to affect any private right of action that a consumer may hold against Respondent.

7. PENALTY FOR FAILURE TO COMPLY

7.1 Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is prima facie evidence of a violation of the Tennessee Consumer Protection Act.

7.2 Respondent understands that any knowing violation of the terms of this Assurance is punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties. Respondent agrees to pay all court costs and attorneys' fees associated with any petitions to enforce this Assurance and Order against the Respondent.

8. VENUE

8.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Chancery Court of Davidson County, Tennessee.

9. REPRESENTATIONS AND WARRANTIES

9.1 The parties warrant that they will implement the terms of this Assurance in good faith.

9.2 Respondent represents that signatories to this Assurance have authority to act for and bind the Respondent.

9.3 Respondent will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts set forth and prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

9.4 Neither Respondent nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent. Nothing in this paragraph shall prohibit Respondent from stating that Respondent has entered into a settlement with the State, from stating that any specific action is required by the Assurance if such is the case, or from making any other truthful statement regarding the Assurance.

9.5 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or other business practices.

9.6 Within thirty (30) days of the entry of this Assurance, Respondent shall submit a copy of this Assurance to each of its officers, directors, employees and any third parties who act directly or indirectly on behalf of the Respondent as an agent, independent contractor or who are, involved in conducting business in the State of Tennessee. Within forty-five (45) days of entry of this Assurance, Respondent shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Assurance.

9.7 Respondent represents that West Quest, Inc. is the true legal name of the entity entering into this Assurance of Voluntary Compliance and Agreed Order. Respondent understands that the State expressly relies upon this representation and if this representation is false or misleading, the State may move to vacate or set aside this Assurance and Agreed Order, and may request that Respondent be held in contempt.

9.8 This Assurance and Agreed Order may only be enforced by the parties hereto.

9.9 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

9.10 This Assurance and Agreed Order constitutes the complete agreement of the parties with regard to the resolution of the State's allegations.

9.11 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee, or to bar the State or other governmental entity from enforcing laws, regulations or rules against Respondent, except to the extent that such matters have been settled by this Assurance.

9.12 This Assurance shall be binding and effective upon the parties upon their signing the Assurance.

10. COMPLIANCE WITH OTHER LAWS

10.1 Nothing in this Assurance and Order shall be construed as relieving Respondent of the obligation to comply with any state or federal law, regulation or rule.

11. FILING OF ASSURANCE

11.1 Upon the execution of this Assurance, the Attorney General shall prepare and file in the Chancery Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which it may have to be heard in connection with the filing of the Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondent shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order.

12. APPLICABILITY OF ASSURANCE TO RESPONDENT AND ITS SUCCESSORS

12.1 Respondent agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to it, each of its officers, directors, agents, or other entities it controls, manages or operates, its successors and assigns, and to other persons or entities acting directly or indirectly on its or their behalf.

13. COSTS

13.1 All costs associated with the filing of this Assurance shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116.

14. NOTIFICATION TO STATE

14.1 For five (5) years following execution of this Assurance, Respondent shall notify the Attorney General, c/o Consumer Protection Division, 500 Charlotte Avenue, Nashville, Tennessee 37243-0491, in writing, at least thirty (30) days prior to the effective date of any proposed changes in its corporate

structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Respondent's status that may materially affect compliance with obligations arising out of this Assurance.